

Internal Revenue Service
memorandum

CC:INTL-0483-90
Br5:RLChewning

date: OCT 11 1990

to: [REDACTED]

from: Robert Katcher Branch Chief CC:INTL:Br5

Robert Katcher

subject: [REDACTED] --Addendum to 9-27-90
Informal Technical Advice

THIS DOCUMENT CONTAINS PRIVILEGED INFORMATION UNDER SECTION 6103 OF THE INTERNAL REVENUE CODE. THIS DOCUMENT ALSO INCLUDES STATEMENTS SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT PRIVILEGE. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE IRS, INCLUDING THE TAXPAYERS INVOLVED, AND ITS USE WITHIN THE IRS SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT FOR USE IN THEIR OWN CASES.

In our informal technical advice dated September 27, 1990, we stated that "In our opinion, the pay back of the [REDACTED]'s interest supposedly for the right to use [REDACTED] [the golf course developed by [REDACTED]] is completely circular and does not have any economic significance. Therefore, it should be ignored for purposes of determining whether there has been a distribution of the right to sell memberships, and the amount of the distribution, to [REDACTED] [REDACTED]'s [REDACTED] parent]. In addition, the [REDACTED]'s payment should be considered either interest or a dividend and the pay back should not be considered operating income of [REDACTED]."

Our conclusion that the pay back should not be considered operating income was based on the statement made in the [REDACTED] letter of [REDACTED], that "A membership will thus be essentially a contract right, and the purchase of a membership will entitle a member only to the use of the Club facilities subject to such additional charges as may be assessed for consumption of food, beverages, green fees and other similar items, and additionally subject to payment of annual dues and [sic] conformance with Club rules and regulations." We interpreted this language to mean that once a membership in [REDACTED] was purchased from [REDACTED] that the member would be required to make additional payments to [REDACTED] for the use of [REDACTED] and that those additional payments would be [REDACTED]'s operating income.

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In an October 1, 1990, telephone conversation with Richard Chewning of this office you stated that those members who purchased their memberships in [REDACTED] from [REDACTED] paid annual dues but did not pay green fees. However, those members who purchased their memberships in [REDACTED] from [REDACTED] did not pay either annual dues or green fees. In light of these additional facts, it appears that the parties intended that the annual [REDACTED]% payments made by [REDACTED] to [REDACTED] were to replace the annual dues which the [REDACTED] members owed but did not pay. Accordingly, the [REDACTED]% payments from [REDACTED] to [REDACTED] should be considered operating income to [REDACTED]. Further, in our opinion, the [REDACTED]% payments from [REDACTED] to [REDACTED] should be classified as payments with respect to [REDACTED]'s stock interest in [REDACTED]. Thus, the payment would be a dividend to the extent of [REDACTED]'s earnings and profits, see sections 301(c) and 316.

cc: District Counsel
Los Angeles District

cc: District Counsel
[REDACTED] District